THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.Nos.34076/97 & 25460/99

Date: 16th November, 2006

Between :-

WRIT PETITION No. 34076 of 1997

Vijaya Oil Company, Guntur rep.
by its Partner V.R.K.V. Prasad,
S/o. Devala Rao, R/o. B/8, S.V.N. Colony,
Guntur **..... PETITIONER**

AND

1. Vijayawada, Guntur, Tenali Urban
Development Authority, Vijayawada.
2. Municipal Corporation, Guntur,
Guntur District.
3.M/s. Hindustan Petrolium Corporation Limited,
Secunderabad.
4. G.Saraswathi, C/o. Krishna,
Jr. Chemist, State Agmark Laboratories,
Guntur District.

.....RESPONDENTS

WRIT PETITION No. 25460 of 1999

M/s. Vijaya Oil Company,
Brundavan Gardens, Guntur
Rep. by its Proprietor V.R.K.V. Prasad,
S/o. Devala Rao, aged 62 years,
R/o. R8, S.V.N. Colony, Guntur.

..... PETITIONER

AND

1 The Collector and the District Magistrate,
Guntur.
2 Hindustan Petroleum Corporation,
Rep. by its Regional Manager, Office at
Rastrapathi Road, Secunderabad.
3 Joint Chief Controller of Explosives,
South Circle, Sastri Bhavan, Chennai.

.....RESPONDENTS

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.....RESPONDENTS

Counsel for the Petitioners: M.Chandrasekhara Rao.

Counsel for the 1st respondent in WP 34076 OF 1997:
K. Aruna (Standing Counsel)
Counsel for the 2nd respondent in WP 34076 OF 1997:
Smt.Jhansi
Counsel for the 3rd respondent in W.P.No.34076 of 1997:
Sri P.V.Sanjay Kumar
Counsel for the 4th respondent in W.P.No.34076 of 1997:
Sri G. Peda Babu
Counsel for the 1st respondent in W.P.No.24560 of 1999:
G.P.for Civil Supplies
Counsel for the 2nd respondent in W.P.No.24560 of 1999:
Sri P.V.Sanjay Kumar
Counsel for the 3rd respondent in W.P.No.24560 of 1999:
Mrs. E.Urmial

< GIST:

> HEAD NOTE:

? Cases referred

THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition Nos.34076/97 and 25460/99

COMMON ORDER:-

1. Vijaya Oil Company, Guntur is the writ petitioner in both these Writ Petitions.

2. W.P.No.34067/97 is filed praying for issuance of an appropriate Writ, Order or direction, especially one in the nature of Writ of Mandamus declaring the impugned proceedings of the 1st respondent in Rc.No.E1/381/97 dated 20-11-1997 and the consequential proceedings of the

2nd respondent in Roc.No.6847/97/G1 dated 28-11-1997 as illegal, arbitrary, unjust, without jurisdiction, malafide, opposed to principles of natural justice and null and void and to pass such other suitable orders.

3. Vijayawada, Guntur, Tenali Urban Development Authority, Vijayawada, Municipal Corporation, Guntur and M/s.Hindustan Petrolium Corporation Limited, Secunderabad, were originally shown as respondents. G.Saraswathi, a neighbour, filed an application to implead herself as a party in WPMP.No.3173/98 and by order dated 1-7-98 she was impleaded as 4th respondent.

4. R.2 and R.3 filed counter affidavits and reply affidavit also was filed.

5. This Court on 22-12-1997 made the following Order:-

> *"Mr.A.Raghavaiah takes notice for R.1, Mr.T.S.Venkata Ramana takes notice for R.2 and Mr.Sanjay Kumar takes notice for R.3.*
>
> *It appears prima facie that the first respondent has no jurisdiction to suspend the licence of the petitioner. Under Section 153 of the Petroleum Rules, 1976 the Licencing Authority has got a right to suspend the licence on the grounds that the licensee ceases to have any right to the site for storing petroleum or if the 'No Objection Certificate' was cancelled or for any violation of the*

Act. Proviso of the Rules also makes it clear that before suspension, the holder of the licence shall be given an opportunity. In the present case, this rule appears to have been complied only in its breach.

In the circumstances, there shall be interim suspension of the impugned order. Post the Writ Petition for admission after two weeks in M.L."

6. This Court issued *rule nisi* on 16-3-1998 and the interim order earlier granted was continued until further orders and the same was made absolute on 9-7-1998 while posting the Writ Petition itself for final hearing.

7. W.P.No.25460/99 is also filed by the self-same M/s.Vijaya Oil Company, Brundavan Gardens, Guntur, as against the Collector and the District Magistrate, Guntur, Hindustan Petroleum Corporation, represented by its Regional Manager, Secunderabad, and Joint Chief Controller of Explosives, South Circle, Sastri Bhavan, Chennai as respondents 1 to 3 praying for a Writ of Mandamus declaring impugned order of the 1st respondent in his proceedings Rc.No.3551/97-Ex.C.6, dated 3-4-99 which was despatched on 2-12-1999 and received by petitioner on 6-12-1999 as illegal, arbitrary, not *bona fide,*

without jurisdiction, opposed to principles of natural justice and null and void and hit by Articles 14, 19 and 21 of the Constitution of India and to pass such other suitable orders.

8. The first respondent filed counter affidavit specifying that the said counter is being filed on behalf of the other respondents also under their authorization.

9. A reply affidavit is filed.

10. This Court while issuing *rule nisi* on 10-12-1999, granted an order of *status quo* for a limited period, which was subsequently extended and ultimately continued until further orders on 27-1-2000 and the interim order, in fact, was made absolute on 18-4-2000 and the matter was directed to appear in the list subject to part-heard on 12-6-2000.

11. Thus, both these matters are taken up for final hearing before this Court on 3-11-2006.

12. Submissions of Sri Movva Chandrasekhar Rao:-

Sri Movva Chandrasekhar Rao, the learned Counsel representing the writ petitioner would maintain that a Petrol Filling Station is permitted in a residential area and in fact, all

the required permissions and the no objection certificate had been obtained but however the impugned orders were made in W.P.No.34076/97 without any authority and contrary to law and in such circumstances, the writ petitioner approached this Court and obtained interim order. The learned Counsel also would submit that the local people have no *locus standi* to raise such objections. The learned Counsel also would submit that when all conditions had been complied with, on certain irrelevant and non-existing grounds, the impugned order was made by the first respondent in W.P.No.25460/99 which was questioned by the writ petitioner and had obtained an interim order. The learned Counsel had taken this Court through the respective pleadings and also the orders impugned in both these Writ Petitions and would maintain that the respective respondents are not justified in making such orders at all since the said orders are either without authority or not based on any tenable objections whatsoever.

13. Submissions of Smt.Aruna:- Smt.Aruna, the learned Counsel representing R.1 in W.P.No.34076/97 would maintain that the Vice-Chairman in question has

power to revoke the permission and in the interest of the public of the locality, the action had been taken. The Counsel made certain submissions in relation to the representations made by the local people and the order of suspension made by the Vice-Chairman in this regard.

14. Submissions of Sri Peda Babu:- Sri Peda Babu, the learned Counsel representing R.4 in W.P.No.34076/97 would maintain that the impugned order is only an interim order and the Vice-Chairman can definitely make such an order. The learned Counsel also would submit that respondent No.4, a neighbour, is definitely an affected party and the local people raised several objections and the very location or establishment of this Petrol Filling Station is contrary to the Rules and the guidelines inasmuch as there is no sufficient width of the road and for that the necessary space from the marked boundary also had not been left.

15. Submissions of Government Pleader for Civil Supplies:- The learned G.P. for Civil Supplies would maintain that when the location or establishment of a Petroleum Filling Station is hazardous to public health, the

first respondent in W.P.No.25460/99 is definitely empowered to make such an order which is impugned in the Writ Petition. The learned Counsel also would submit that misleading particulars relating to the width of the road had been furnished and the stand that the road is of 60 feet wide is not correct. The learned Counsel also would submit that the safety of the local people and the public also may have to be taken into consideration and the environmental problems also may be kept in view and when serious objections are raised by the public, the competent authority – the first respondent is duty bound to consider the same and hence after giving due opportunity, the impugned order was made. The learned G.P. also would point out that the impugned order itself is self-explanatory since reasons in detail had been given. The learned Counsel also pointed out to the relevant Rules, the Petroleum Rules of 1976, which were applicable at the relevant point of time, and the present Petroleum Rules 2002.

16. The impugned orders in W.P.No.34076/97:-

The first respondent – Vijayawada, Guntur, Tenali Urban Development Authority, Vijayawada made an order

dated 20-11-1997 in Rc.No.E1/381/97 dated 20-11-1997 which reads as hereunder:-

VIJAYAWADA-GUNTUR-TENALI
URBAN DEVELOPMENT AUTHORITY
VIJAYAWADA – 520 002.

K.Mangapathi Rao, IAS
Vice-Chairman.

Rc.E1/381/97, Dated:20-11-1997

To
The Commissioner,
Municipal Corporation,
GUNTUR.

Sir,

*Sub: VGT UDA – **Suspension of permission** granted for **installation of Petrol Bunk** at Survey No:6/E, **Brindavan Gardens,** Guntur until further Orders – requested – regarding.*

Ref: (1) ROC.No. 6847/97/G1, dated 18-8-97 of the Commissioner, Municipal Corporation, Guntur.
(2) Proceedings of the Vice-Chairman, VGT UDA, Vijayawada, for granting permission to install Petrol Bunk, vide D.Dis.No.E1/270/97, dated 11-10-1997 (B.P.No.81/97/GNT)
(3) Memorandum of Appeal of Residents of Brindavan Gardens against the permission for installation of Petrol Bunk in the residential locality, dated 17-11-1997 addressed to Dr.D.V.Balavardhana Rao, Chairman of VGT UDA, Vijayawada.

xxxxx

The proposal for installaltion of Petrol Bunk forwarded by the Commissioner, Municipal Corporation of Guntur in the

reference (1) cited was examined and the permission was granted vide this office proceedings under reference (2) cited taking into consideration of the Zoning Regulatlions and the 'NO OBJECTION CERTIFICATE' issued by the Revenue Divisional Officer and Mandal Revenue Officer, Guntur, Fire Services Department, Guntur, and the approval of drawings for installaltion of Petrol Bunk by the Department of Explosives, Chennai.

However, a memorandum of appeal was submitted by the residents of Brindavan Gardens, Guntur, to the Chairman of this Authority against the installation of Petrol Bunk in the site under reference. The memorandum was examined and the Chairman and Members of this Authority have inspected the site under reference and felt that the location of Petrol Bunk amidst thick residential locality is highly objectionable as it creates Air and Noise pollution to the residents.

Hence, the Chairman of this Authority directed to suspend the permission granted by this Authority in the reference (2) cited for the time being until further orders and the final decision will be taken by the Authority after receipt of remarks from the Inspector of Explosives and the District Collector as the residents of the area have expressed their views against the installation of the Petrol Bunk.

In view of the above circumstances, the permission granted by this Authority for installation of Petrol Bunk in Survey No.6/E, Brindavan Gardens, Guntur, vide proceedings under reference (2) cited is suspended for the time being. Hence, I request you to take necessary action to stop the construction of structures for installation of Petrol Bunk including underground Petrol Filling tank.

Yours faithfully,
Sd/- K.Mangapathi Rao,
Vice-Chairman.

Copy to:

(1) Sri V.Rama Krishna Vara Prasad, SVN Colony, Guntur.
(2) The Executive Sales Officer, H.P.C.Ltd., 1st floor, Siri Apartments, 4th lane, Ashok Nagar, Guntur –2.
(3) The District Collector and Magistrate, Guntur (Civil Supplies) for necessary action.

(4) The Revenue Divisional Officer, Guntur.

(5) The Mandal Revenue Officer, Guntur.

//t.c.f.b.o.//

Sd/-

Administrative Officer.

17. The Municipal Commissioner, Guntur – the 2nd respondent made an order dated 28-11-1997 in Roc.No.6847/97/G1 which reads as hereunder:-

Roc.No.6847/97/G1/Dt.28-11-97 Municipal Corporation,

Guntur.

NOTICE

Sub:- Guntur Municipal Corporation – Installation of underground Tank of Petrol at Brundavan Gardens area – Permission Suspended – Regarding.

Ref:- (1) Proceedings D.Dis.No.E1/270/97 Dt.11-10-1997

of the Vice-Chairman, V.G.T.U.D.A.,Guntur.

(2) Order Rc.No.E1/381/97/Dt.20-11-1997 of the

Vice Chairman, V.G.T.UDA, Vijayawada.

(3) Order of the Commissioner dated 27-11-97.

* * *

The permission to install underground Tank of Petrol at R.S.No.6/E, Brundavan Gardens given vide reference 1 above, is suspended as per the Orders of the Vice-Chairman, V.G.T. UDA, Vijayawada, vide in

the reference 2nd cited.

Hence, you are hereby informed to stop the work for installation of Underground Tank at R.S.No.6/E, Brundavan Gardens.

Sd/-
For Commissioner,
Municipal Corporation,
Guntur.

To
1) Sri V.Ramakrishna Prasad, S.V.N.Colony, Guntur.
2) M/s.Hindustan Petroleum Corporation Limited
Executive Sales Officer, 1st Floor,
Siri Apartments, 4th lane, Ashok Nagar, Guntur.
3) Copy to the Vice-Chairman, U.D.A. for information.

18. The writ petitioner is the authorised dealer for purchase and sale of petroleum products and the 3rd respondent company in W.P.No.34076/97 (hereinafter, in short, referred to as 'Company') entered into a Petrol Dealer agreement with the petitioner dated 1-2-1976 appointing him as the dealer for the retail sale or supply of petroleum products. Previously, the Company had installed a Petrol Filling Station in a leasehold site in Tobacco Colony on the outskirts of Guntur town by the side of the Trunk road from Guntur to Vijayawada and the petitioner was appointed as dealer for sale and supply of petroleum products. As the

lease of the site expired, the Company surrendered that site to its owner and instructed the petitioner for resitement in Guntur-II town for installation of Petrol Filling Station since there was only one such Petrol Filling Station in Guntur-II town while there are 23 such filling stations in Guntur-I town. The petitioner purchased 400 sq.yards of vacant site in S.No6/E of Nallapadu Revenue village in the year 1996 and obtained registered sale deeds on 17-6-1997. The Company got the plans prepared as per the rules framed under the relevant enactments like Petrolium Act, Explosives Act, the Municipal Corporation Act etc., and the Company submitted an application dated 22-11-1996 along with the plans to the Collector, Guntur for granting 'No Objection Certificate' for installation of the Petrol Filling Station. It is further stated that the Collector, Guntur instructed various authorities namely, the Municipal Corporation, Guntur, Revenue Divisional Officer, Mandal Revenue Officer, Superintendent of Police, District Forest Officer, District Medical and Health Officer and Chief Controller Explosives etc., to inspect and send their reports regarding desirability of granting 'No Objection Certificate'

and that the said authorities inspected the site and sent reports recommending the issuance of 'No Objection Certificate' to the Company for installation of Petrol Filling Station. It is stated that as dealer, the petitioner invested about five lakhs of rupees for puchasing the site and for other expenses and another one lakh of rupees for purchasing 4000 litres of petrol as per invoice dated 18-11-1997 and the Company also invested another sum of two lakhs of rupees for installation of underground storage tank for erecting pipe line and for erecting dispensing pump. It is also stated that after issuance of 'No Objection Certificate', the Company installed an underground tank of 22,000 litres capacity of petrol and installed the petrol dispensing pump. The Company also obtained licence under the Explosives Act on 18-11-1997 and the petitioner also obtained registered certificate from Commercial Tax Department and Central Sales Tax. It is further stated that the Joint Collector, Guntur renewed the licence of storage in Form-B on 2-11-1997 for purchase, sale, storage for sale of petroleum oils from 2-11-1997 to 31-12-1997 and the petitioner purchased

4000 litres of petrol under invoice No.307433 dated 18-11-1997 for the value of Rs.1,08,683/- which was delivered to the petitioner on the same date. It is also further stated that on 19-11-1997 the District Inspector of Legal Metrology (Weights and Measures), after inspection, issued a certificate dated 19-11-1997 itself and the petitioner started selling petrol to the customers from 19-11-1997. While so, it is stated that the first respondent and the second respondent issued the impugned proceedings referred to supra and the said impugned proceedings are questioned in the Writ Petition by raising several grounds like want of jurisdiction, want of notice, *estoppel, mala fides* and interference for political reasons.

19. In the counter affidavit filed by the 3rd respondent – the Company, substantially, the stand taken by the writ petitioner had been repeated.

20. In the counter affidavit filed by the 2nd respondent at para 3 it was stated that the District Collector, Guntur, forwarded the copy of the application of the petitioner to Guntur Municipal Corporation and requested to enquire into

the matter and report on the desirability of issuing 'No Objection Certificate' for installation of underground tank of 22,000 litres for Class-B storage for petrol. It is stated that during the course of process of file, a public representation addressed to the District Collector, Guntur raising an objection that the site for installation of the Petrol Filling Station falls under residential area and is dangerous to the people in surroundings and the same was forwarded to the Guntur Municipal Corporation for enquiry and report. It is further stated that the site was inspected and a detailed report was prepared on the proposal duly mentioning the objection s and forwarded the same to the Vice-Chairman, V.G.T.U.D.A. for orders since they are the competent authorities to issue N.O.C. as per the Rules in force. It is also further stated that the Company has unauthorisedly installed storage tank for erecting pipeline and for erecting dispensing pump. It is also stated that the Company installed an underground tank of 22,000 litres capacity of petrol and installed the petrol-dispensing pump without obtaining permission for the construction. It is also further stated that the first respondent issued the proceedings in

Roc.No.381/97/E1/dt.20-11-97 requesting this respondent to take necessary action to stop the construction of the structures for installation of petrol bunk including underground Petrol Filling Tank on the ground that the residents of the surroundings filed a memorandum of appeal against the granting of permission for installation of Petrol Bunk complaining that the said suit was located in the residential locality and it causes Air and Noise pollution to the residents. It is also further stated that this respondent issued the consequential order in the proceedings Roc.No.6847/97/G1/ dt.28-11-1997 informing the petitioner and the Company to stop the work for installation of the underground basing on the suspension orders issued by the V.G.T.U.D.A. It is also stated that it is not true to say that the underground tank was already constructed and Petrol Filling Station has came into operation by 19-11-1997. It is further stated that in fact the petitioner has commenced the further construction only after obtaining the interim injunction by this Court and the petitioner never obtained regular permission or licence from the competent

authority i.e., the District Collector. It is also further stated that the petitioner has now ay right to approach this Court as the plaintiff never applied for regular permission from any of the competent authorities and only the Company had approached the competent authorities to obtained permission. It is also stated that the petitioner has unauthorisedly commenced the installation of the Petrol Filling Station. Further stand is taken that the respondents are competent under the provisions of A.P.Urban Area (Development) Act 1975 and H.M.C.Act to cancel the permission granted in the interest of public. Further specific stand is taken that the width of the existing road is only 47 ft. in front of the site in question though 80 ft. road is proposed in the Master Plan and it may not be possible to implement it even at a distance future.

21. No doubt, certain submissions were made that the V.G.T.U.D.A. is having such power to make an order of suspension. But, in view of the facts and circumstances and also in the light of the stand taken in the affidavit filed in support of the Writ Petition and also the counter affidavit filed

by the 3rd respondent – Company, this Court is of the considered opinion that the impugned order in the said Writ Petition cannot be sustained.

22. Impugned Order in W.P.No.25460/99:-

The Collector and the District Magistrate – the 1st respondent in the Writ Petition on 3-4-1999 in Rc.No.3551/97-C6 made the following Order:-

PROCEEDINGS OF THE COLLECTOR AND District MAGISTRATE:: GUNTUR

PRESENT: SRI SHASHANK GOEL, IAS.,

Rc.No.3551/97-C6, Dated : 03-04-1999

Sub:- Petroleum Act & Rules – Guntur District, Guntur Mandal and Town – W.P.No.31019/97 dt.24-11-1997 from High Court of Andhra Pradesh, Hyderabad filed by Bhavanam Govinda Reddy and two others of Guntur against the 'No Objection Certificate' granted for installation of Petrol Bunk out-let in S.No.6/E of Brundavan Gardens, Guntur, in favour of Manager (Sales) Hindustan Petroleum Corporation Limited, Secunderabad in residential locality – Show cause Notice issued – 'No Objection Certificate' cancelled – Orders – issued – Regarding.

Read:- 1) Application of Manager, Hindustan Petroleum Corporation Limited, Secunderabad dt.25-11-1996.
2) Collector's D. Dis. No.2538/96-C6 dt.28-10-1997
3) Hon'ble High Court of A.P. Hyderabad order W.P.No.31019/97 dt.24-11-97 filed by

Bhavanam Govinda Reddy and others, Guntur.

4) Collector's Notice Rc.3551/97-C7 dt.29-12-97, 23-1-98, 28-7-98, 7-9-98 and 19-10-1998.

5) Collector's Notice Rc.No.3551/97-C7 dt.22-1-1999 to the Chief Regional Manager, H.P.C.Limited, Secunderabad.

6) From Chief Regional Manager, H.P.C.Ltd., Secunderabad explanation dt.10-2-99

7) Other connected papers.

-: o0o :-

ORDER:-

The Manager (Sales) Hindustan Petroleum Corporation Limited, Secunderabad has put in an application requesting for grant of 'No Objection Certificate' for installation of Petrol Bunk with an underground tank in S.No.6/E of Brundavan Gardens, Guntur to store 24 K.Ls of Petrol and the 'No Objection Certificate' was granted duly consulting the inspecting Officers (i.e.) (1) The Revenue Divisional Officer, Guntur, (2) The Superintendent of Police, Guntur (3) The Divisional Fire Officer, Guntur (4) The District Medical & Health Officer, Guntur and (5) The Commissioner, Municipal Corporation Guntur in this office D.Dis.No.2538/96-C6 dt.28-10-1997 for installation of underground tank to store petrol in S.No.6/E of Brundavan Gardens, Guntur in favour of Hindustan Petroleum Corporation Limited, Secunderabad.

Aggrieved upon the issue of 'No Objection Certificate', one Smt.Gandham Saraswathi and 64 other residents of Brundavan Gardens, Guntur filed an objection petition stating that the 'No Objection Certificate' granted for installation of Petrol Bunk retail out-let in the residential locality in S.No.6/E of Brundavan Gardens, Guntur became dangerous, hazardous, unsafe and inconvenience structures in the locality and requested for cancellation of the 'No Objection Certificate' granted to the Hindustan Petroleum Corporation Limited, Secunderabad.

Further some of the objectors (i.e., Bhavanam

Govinda Reddy and 2 others have also approached the High Court of Judicature in W.P.No.31019/97 against the grant of 'No Objection Certificate' on which the Hon'ble High Court in its order dt.24-11-1997 while disposing of the W.P.No.31019/97, directed the District Collector, Guntur to consider the representation made by the petitioners according with law and the second respondent i.e., The Manager (Sales), Hindustan Petroleum Corporation Limited, Secunderabad should be given a Notice before any orders are passed and it is open for him (2nd respondent) to raise his objections.

According to the directions of the Hon'ble High Court of Andhra Pradesh, Hyderabad in its order dt.24-11-1997 in W.P.No.31019/97, the Collector & District Magistrate, Guntur issued Notices to the objection petitioners and also, the Chief Regional Manager and duly constituted attorney, Hindustan Petroleum Corporation Limited, Secunderabad to appear in person and to represent their case regarding the installation of Petrol Bunk in S.No.6/E of Brundavan Gardens, Guntur in this Office Rc.No.3551/97-C6 dt.29-12-1997, 23-1-1998, 26-7-98, 7-9-98 and 19-10-1998.

The objection petitioners appears and represented by an Advocate Sri A.Sanjeeva Reddy and stated as follows:

1. *Grant of 'No Objection Certificate' is not legal since the Petrol Bunk is located in a densely populated residential locality that the underground petrol tank is located at a distance of 13'-6" from the petitioners (Smt.G.Saraswathi) house in D.No.3.30.4A on the North-West side and sparks of fire may come up to Petrol Bunk side creating a major Fire accident.*
2. *The residents of the locality are habituated to fire Deevali Crackers etc., during festival days in the open when fire sparks may fall on the Petrol Bunk which may result in a major fire accident.*
3. *Most of the residents in that locality are middle class people and used to cook food in the open in front of the houses or on the back and use, coal boilers and depending upon the directions of the wind, the fire sparks may spread over to the Petrol Bunk which may result in*

serious fire accident.

4. *Some times the residents of the locality being middle class people, used to cook food in open more particularly during the functions under Shamiyanas when wood issued and fire sparks of which may go up to the Petrol Bunk nearby which may result in fire accidents.*

All the residents have stated in one voice that the installation of Petrol Bunk in the president residential locality is very dangerous, hazardous and unsafe to the life of residents nearby and their properties.

The Advocate on behalf of the Hindustan Petroleum Corporation of Petrol Bunk was done after the grant of 'No Objection Certificate' by the District Revenue Officer, Guntur on the recommendation of various Inspecting Officers (i.e.) The Revenue Divisional Officer, Guntur, Superintendent of Police, Guntur, Divisional Fire Officer, Guntur, District Medical & Health Officer, Guntur and Commissioner Municipal Corporation, Guntur and it is not dangerous to the residents in the area as all Fire Precautionary measures have been taken as pointed out by the Divisional Fire Officer, Guntur.

On hearing both sides (i.e.) the objections and the objectors' Advocate, and the Hindustan Petroleum Corporation Limited, Secunderabad represented by Chief Regional Manager & duly constituted Attorney, Secunderabad and his Advocate, the then Collector and District Magistrate, personally inspected the site in S.No.6/E of Brundavan Gardens, Guntur on 5-12-98 along with Revenue Divisional Officer, Guntur, Secretary, VGT, Guntur, Commissioner, Municipal Corporation, Guntur, and Police Departmental authorities duly informing the objectors in the locality and also the Manager (sales) Hindustan Petroleum Corporation Limited, Secunderabad, objection petitioners attended on the date of personal inspection of the site.

In view of the personal Inspection of the then Collector & District Magistrate, Guntur a show cause notice was issued to the Chief Regional Manager and duly constittued Attorney, Hindustan Petroleum Corporation Limited, Secunderabad in the reference 5th read above duly framing

charges for the irregularities committed to be Chief Regional Manager, H.P.C. Limited, Secunderabad has submitted explanation vide reference 6th read above. He also appeared before the District Revenue Officer, Guntur on 11-2-1999 and stated the same as mentioned in his written explanation.

The following are the violations committed, explanation and findings :-

VIOLATION No.1:-

At the time of inspection it is found that the underground Petrol tank is located at a short distance of 13'-6" from the fire place/kitchen of house bearing DoorNo.3-30-4/A relating to Smt.G.Saraswathi which may possibly cause a fire accident.

EXPLANATION:-

According to conditions prescribed under Form XII of the Petroleum Act (Licence) the Petroleum storage Tank shall not be situated within a distance of 1.5 metres from any marked boundary of the plan submitted. But in this case, the Petrol Tank is situated at a distance of 9' from the marked boundary and 13'-6" from the kitchen of Smt.G.Saraswathi. Further when the tank is covered by concrete top and sealed and the drive way is permitted over it by the explosives department, the tank can be located upto the marked boundary and even this case there would be no hazard to the neighbouring locality. In the present case, there is no openings from the kitchen of Smt.G.Saraswathi by way of Door way or window towards the Petrol Filling Station.

FINDINGS ON REPLY TO VIOLATION No.1:-

The Petrol Bunk is located at a short distance of 13'-6" feet from the kitchen room of the house bearing Door No.3-30-4/A belonging to Smt.G.Saraswathi, but according to condition of Licence granted in Form No.XII vide Chief Controller of Explosives, Madras, condition No.2 reads as follows:

2. Every tank shall be outside to any building

and placed in a masonary or concrete pit and packed around with sand, earth or clay so that no air space is left between the tank and the masonary or concrete pit and the tank is not visible such a masonary or concrete pit shall not be obligatory if the tank is welded one and tested upto a preasure of 0.25 kg.per square centimetre and is burried and is one a private, leased or rented land and no part of the tank is less than 1.5 metres from any point of the marked boundary of the licenced premises in the approved plan attached hereto.

The contention of the Chief Regional Manager, Hindustan Petroleum Corporation Limited, Secunderabad that Petrol Bunk is within the limits prescribed in condition No.2 of the Licence.

At the time of inspection of the then Collector the underground Petrol Tank is located at a short distance of 13'-6" from the fire place i.e., Kitchen of the house of bearing Door No.3-304-A relating to Smt. G.Saraswathi which may cause fire accident. Hence, this violation is established.

VIOLATION No.2:-

The Bunk has been constructed even the suspension orders of the VGT UDA dated 20-11-1997 and Municipal Commissioner, Guntur, dt.28-11-1997 for time being that you have completed in a hurried fashion and without completing the construction on all aspects you have been selling the Petrol from 19-11-1997 motivately, ignoring the orders of the VGT UDA and continued running the Bunk upto 22-12-97 unauthorisedly i.e., upto the receipt of interim direction of Hon'ble High Court of Andhra Pradesh, Hyderabad order dated 22-12-1997.

The charge that Petrol was unauthorisedly sold between 20-11-1997 till 23-12-1997 i.e., Petrol was sold even after the orders of the VGT UDA suspending permission of the construction of the tank is not tenable being factually not true and unsustainable under law. As a matter of the fact, the orders of VGT UDA suspending permission was received by the dealer on 21-11-1997. The

dealer did not sell even a drop of Petrol on 21-11-1997 and on subsequent days till the orders of the High Court of A.P. in W.P.No.40089/97 W.P.M.P.No.34076/97 dt.22-12-1997 suspending the proceedings of VGT UDA in this regard. The records would reveal that there is no sale of Petrol by the dealer in the subject Petrol Bunk between the period 21-11-1997 till 23-11-1997. The sale of Petrol by the dealer on 20-11-1997 is in order of the VGT UDA seems to have been dated 20-11-1997 which was served on the dealer on 21-11-1997. Therefore, even assuming the dealer is bound by the orders of the VGT UDA we have to obey it only from the date of receipt of the order, because till such time we received the order, we were not aware of the same. Therefore, as a matter of fact, there is absolutely no violation much less, disobedience of the orders of the VGT UDA. Further, we may be permitted to state that when once a licence has been granted by the District Collector being the competent authority after observing the required formalities, we are not bound by the ill motivated and illegal orders of the VGT UDA having originally given its accord and in pursuance of which the 'No Objection Certificate' was granted it is not open to it to go back and cancel permission, it having made the Corporation to believe that every thing was in order and made the Corporation and the dealer spend huge amounts in the erection of the Petrol Bunk. Further as amount of fact even by the date of receipt of the orders from VGT UDA which is in question the construction of Petrol tank was completed and the same fact was brought to the notice of Hon'ble High Court in W.P.No.40089/97 which the dealer filed. The VGT UDA has no propriety or right to pass an order stopping construction of Petrol tank after issue of licence by the District Collector and without consultation and consent of the District Collector. The District Collector having granted 'No Objection Certificate' shall not entertain and it is not just and lawful to entertain any objection on the part of the VGT UDA in the matter of establishment of Petrol Bunk in question.

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FINDINGS ON REPLY TO VIOLATION No.2:-

The violation is that the VGT UDA suspended the permission accorded for the location of the Petrol Bunk on 20-11-1997 which was served on the dealer on 21-11-1997 and contended by the Hindustan Petroleum Corporation Limited, Secunderabad. Copy of the sales Register furnished by the Hindustan Petroleum Corporation Limited, Secunderabad shows that he did not sell petrol during the period i.e., 21-11-1997 to 23-11-1997. The H.P.C.Limited Secunderabad contended that they did not disobey the orders of the VGT UDA. In this connection, it is submitted that the VGT UDA in its Rc.E1/381/97, dated 20-11-1997 suspended the installation of the Petrol Bunk and directed the Petrol Bunk dealer to stop construction of structures in the said S.No.6/E Brundavan Gardens, Guntur. It is not out of place to point out that the order issued by the VGT UDA suspending the permission granted by them by the VGT UDA suspending the permission granted by them would not come into force till the N.O.C. granted by the Collector is withdrawn and the Licence in Form XII granted by the Chief Controller of Explosives, Madras is cancelled. Thus the violation put forth would may not sustain. The Properiety or right of VGT UDA in suspending the permission granted by it for the installation of Petrol Bunk was not accepted by the High Court in its interim order in W.P.No.34076/97 M.P.No.3712/97 dated 22-12-1997. It is further submitted in this connection that the H.P.C.Limited, which obtained N.O.C. from the Collector for installation of Petrol Bunk, approached the Chief Controller of Explosives, Madras for grant of Licence in Form XII to Store Petroleum with Retail Outlet for the fuel in motor conveyances and was granted the said licence in Form XII in No.A.P.5044, dated 18-11-1997. The said licence generally reach the dealer the next i.e., on 19-11-1997 even supposing he brings the licence from Madras to Guntur. But the dealer in his haste and over anxiety purchased petrol from H.P.C., Vijayawada meant for Vijaya Oil Company, Mangalagiri Road, Guntur and dumped it in his Vijaya Oil Company Petrol Bunk in

Brundavangardens, Guntur. This goes to say that the purchase of 4,000 litres petrol from HPC on 18-11-1997 itself i.e., the date of grant of licence at Madras, is not covered by valid licence to be displayed at the Petrol Bunk i.e., Brundavan Gradens, Guntur. Hence, this violation is established.

VIOLATION No.3:-

In the application for grant of 'No Objection Certificate' the Manager (Sales) Hindustan Petroleum Corporation Limited, Secunderabad stated that the road width (on which the proposed Petrol Bunk is abutting) is shown in the Plan as 60'. But after verification and measurement on ground, it found the road width is 48' only.

EXPLANATION:-

The Hindustan Petroleum Corporation Limited mentioned in the plan attached to the application form showing the width of the road as 60'. Whereas on physical verification it is found that the width of the road is 48' in front of the Petrol Bunk in question, that as per the municipal records, the width of the road is 60'. But at some place the width of the road is found reduced to 48' on account of the unauthorised encroachments by the residents and we cannot be held liable for the same. The Commissioner, Municipal Corporation, Guntur, has categorically admitted that the width of the road is 80' as per the master plan in the counter affidavit by him in W.P.M.P.No.40089/97 in W.P.No.34076/97 on the file of the High Court of Andhra Pradesh. An undertaking from the dealer was also taken by the Municipal Corporation, Guntur that no compensation can be claimed if any site is taken at the time of road widening. He also submitted that the relevant Petrol Bunk is not on high way.

FINDINGS ON REPLY TO VIOLATION No.3:-

The contention of the H.P.C. that the width of the road (i.e., link road between ring road from Lakshmipuram main road) is 60' feet wide as per Municipal

Records and that the Commissioner, Municipal Corporation, Guntur, has admitted that the width of road under dispute is 80' feet as per the master plan. On verification from the Counter affidavit filed by the Municipal Corporation in W.P.M.P.No.40089/97 in W.P.No.34076/97, the contention of the Hindustan Petroleum Corporation Limited is not tenable for the reasons that:-

1) *The actual road on ground abutting the Petrol Bunk is only 48' feet when measured at the time of Inspection by the Collector on 5-12-1998.*
2) *The Municipal Commissioner in his counter affidavit in W.P.34076/97 while explaining the width of the road stated that the width of the existing road is 47' feet in front of the suit site "Petrol Bunk" that though an 80' feet road was proposed in the matter it may not be possible to implement it at this distance of time the contention of the H.P.C. that the road witdth is 60' feet is not correct. Thus the HPC had misinformed the Collector in their application seeking grant of N.O.C. that the width of the road is 60' feet while it was only 48' feet wide.*

Hence this violation is established.

<u>VIOLATION No.4:-</u>

There is also no sufficient place after negotiations for the entrance and exit of vehicles at the Petrol Bunk particularly bigger vehicles are not having sufficient place to enter the area for refilling.

<u>EXPLANATION:-</u>

The outlet does not provide sufficient place for negotiations of bigger vehicles, that this objection has no relevance to the point of issue much less it does not amount to violation of any rules or regulations. The frontage of the outlet is 54'. It is a lone MS (petrol) outlet and sale of High Speed diesel is not contemplated. Hence, the question of bigger vehicles entering into the outlet does not arise. The outlet is essentially for the purpose of serving two wheelers, autos and Petrol cars.

FINDINGS ON REPLY TO VIOLATION No.4:-

The contention of the Hindustan Petroleum Corporation that the Petrol Bunk is meant for fueling of Petrol alone for serving the purpose of two wheelers, autos and petrol cars and that the sale of H.S.D. Oil is not contemplated cannot be accepted. The vehicles supplying Petrol to the Petrol Bunk is almost of the size of a lorry and such vehicle cannot negotiate property to get into the Petrol Bunk and to go out freely. The site available for the Petrol Bunk appears not sufficient for negotiation of bigger vehicles. Hence this violation is established.

VIOLATION No.5:-

The residents of the locality in one voice requested to close the Petrol Bunk immediately as it is dangerous to Public Health and hazardous to the life and properties in case of any possible fire accident.

EXPLANATION :-

The above objection is most untenable, unreasonable motivated and in fact not true and it is only intended to cause immense loss to H.P.C. and to the dealer and it is engineered by few individuals with vested interests. When the statutory Zonal regulations permit the setting up of Petrol Filling Station in residential localities it shall be deemed that the Government have considered the pros and cons of the establishment of a Petrol Filling Station in a residential locality and came to the conclusion that there is no danger or hazard to public life and property. Therefore, it is not open to them to request for cancellation of N.O.C. on the ground that it is a residential locality and that hazardous to life and property. It is also stated that a handful of people politically influential and financially rich, who are inimically disposed towards the dealer are busy making attempts to get the N.O.C. cancelled in some way or other because the dealer was not prepared to accede to their unlawful demands. But, the entire residents of the locality are supporting the setting up of the Petrol Bunk or else it could not have been possible for the pump to reach

70 KL Petrol sales from the outlet per month.

FINDINGS ON REPLY TO VIOLATION No.5:-

No doubt the Petrol Bunk is located in a thickly populated residential area however the residents in one voice represented to the Collector at the time of his inspection of the site to cancel the 'No Objection Certificate'. Hence, this violation is also established.

Since, all the above violations are clearly established, and there is scope for dangerous to Public Health and Hazardous to the life and properties in case of any possible fire accident, under the powers invoked to me under the Rule-151 of the Petroleum Rules 1976, I, Sri Shashank Goel, Collector and District Magistrate, Guntur hereby order to cancel the 'No Objection Certificate' granted to Sri G.Rama Swamy, Sales Manager, Hindustan Petroleum Corporation Limited, Secunderabad vide Collector's D.Dis.No.2538/96-C6 dated 28-10-1997

Sd/- Shashank Goel,
COLLECTOR & DISTRICT
MAGISTRATE:: GUNTUR

/t.c.f.b.o./
Sd/-
Superintendent

To

Sri G.Ramaswamy, Sales Manager, Hindustan Petroleum Corporation Limited, 130/1, Sarojini Devi Road, Secunderabad (By R.P.A.D.)

Copy to Chief Regional Manager, and duly constituted Attorney, Hindustan Petroleum Corporation Limited, 130/1, Sarojini Devi Road, Secunderabad (By R.P.A.D.)

Copy to M/s.Vijaya Oil Company, Brundavan Gardents, Guntur

Copy to the Jt.Chief Controller of Explosives, Govt. of India, South Circle, Chennai (Licensing Authority) with a request to cancel the Licence bearing No.AP 5044, dated 18-11-97 issued in favour of M/s.Hindustan Petroleum Corporation Limited, Secunderabad immediately under intimation to this office (By R.P.A.D.)

Copy to the Superintendent of Police, Guntur.

Copy to the Revenue Divisional Officer, Guntur.
Copy to the Commissioner, Municipal Corporation, Guntur.
Copy to the Vice-Chairman, VGT UDA, Vijayawada.
Copy to the Divl.Fire Officer, Guntur.
Copy to the D.M. & H.O., Guntur.

23. Several factual details are narrated in the affidavit filed in support of the Writ Petition and a counter affidavit is filed by the first respondent. A reply affidavit is also filed again reiterating the same stand taken in the affidavit filed in the Writ Petition. It may be relevant to have a glance at the stand taken in the affidavit filed in support of the Writ Petition by the writ petitioner. Virtually, the same factual details relating to the running of the Petrol Filling Station on a leasehold site and subsequent thereto purchasing the property as specified supra had been repeated. It is needless to say that in this Writ Petition, Hindustan Petroleum Corporation Limited is shown as 2nd respondent (hereinafter referred as 'Company'). It is stated that after purchasing the land, the Company made an application dated 20-1-1997 along with the necessary drawings showing the location of the proposed installation of the underground petroleum tank and other details for granting

basic explosive licence under Rule 131 of the Petroleum Rules. The Chief Controller of Explosives, Chennai, Government of India issued basic licence approving the drawing by an order dated 18-3-1997 after being satisfied that the drawing are inconfirmity with the provisions of the Petroleum Act and Petroleum Rules (hereinafter referred to as 'the Act' and 'Rules') and directed the Company to forward certain other documents such as the pressure test and safety certificate in the prescribed proforma as required under Rule 126 and 130 and a 'No Objection Certificate' under Rule 133 of the Rules in original from the District authorities together with a copy of the site plan attested by him as soon as the approved works are completed for purpose of granting a licence under Rule 141 of Petroleum Rules. It is also stated that the Company made an application to the Collector along with 8 sets of drawing etc., for granting 'No Objection Certificate' for installation of underground tank of 22,000 litres for Class 'B' storage petrol. It is further stated that the District Revenue Officer, Guntur under the delegated powers of the Collector asked the inspection reports of various departments such as

Medical and Health Department, Revenue Department, District Forest Officer, Superintendent of Police, Commissioner of Municipal Corporation etc., and all the officials of the said departments inspected the site and verified whether the location of the proposed installation of underground petroleum tank etc., are in confirmity with the drawings and other rules. It is also further stated that after being satisfying that the proposed installation of tank is in confirmity with the rules, they sent reports stating that there is no objection for granting 'No Objection Certificate' and after considering the said reports, the District Revenue Officer granted 'No Objection Certificate' in his proceedings D.Dis.No.2538/96-06 dated 28-10-1997 to the 2nd respondent for installation of underground petroleum tank subject to the conditions of taking Fire prevention and fire protection measures mentioned in the 'No Objection Certificate'. It is also stated that the Company has installed the underground petroleum tank after fulfilling all the conditions mentioned in the 'No Objection Certificate' and the relevant rules. It is stated that 'No Objection Certificate'

was issued after fully complying with all the relevant rules and the same is perfectly legal and valid. It is also stated that after sending the 'No Objection Certificate' along with the pressure test and safety certificate no doubt other documents, the Chief Controller of Explosives, South Circle, Chennai, has issued licence No.A.P.5044 dated 18-11-1997 for storage of 22,000 K.L. of petrol and for sale and that from 19-11-1997, the petitioner began sale of petroleum through the outlet. It is further stated that the petitioner received an order dated 20-11-1997 passed by VUDA suspending the permission granted by it through a messenger on 20-11-1997 and received the copy of the same officially on 28-11-1997 through the Municipal Corporation, Guntur. It is also further stated that after issuing 'No Objection Certificate', neither VGT-UDA nor the District Revenue Officer nor the Collector nor the other officials from whom he obtained the necessary certificates have any power to cancel the 'No Objection Certificate' or the inspection reports. It is also stated that the order of District Revenue Officer, Guntur dated 28-10-1997 granting the 'No Objection Certificate' has become final and no appeal was preferred against it and

there is no power of review to cancel the 'No Objection Certificate' or the other reports. It is also further stated that the Collector has got the power to cancel the 'No Objection Certificate' under Rule 151 only if the Collector is satisfied that the c has caused to have a right to use the site for storing petroleum. It is also further stated that while so, one Bhavanam Govinda Reddy and two others filed W.P.No.31019/97 for issuing a Writ of Mandamus declaring the 'No Objection Certificate' issued by the District Revenue Officer, Guntur in D.Dis.No.2538/96-C6 dated 28-10-1997 as arbitrary, illegal, against public interest and consequently to set aside the same contending that they have got a right to make representations and accordingly they made representations dated 17-11-1997, 18-11-1997 and 20-11-1997 before the Collector which were of the considered by him. It is stated that the objectors have no right under the Act and Rules to file objection petitions. It is also stated that though the petitioner was impleaded as 3rd in the said Writ Petition, the Writ Petition was finally disposed of by an order dated 24-11-1997 at the stage of

admission and without notice to the petitioner directing the Collector, Guntur to consider the representation petitions made by the petitioners in accordance with law and after giving notice to the Company. It is also stated that the said order which affects the petitioner's rights and without notice to the petitioner is not binding upon the petitioner. It is further stated that the then Collector, Guntur heard the arguments of both sides and posted the matter to 24-10-1998 at 4.45 p.m. for Judgment and issued a notice dated 18-10-1998 directing the parties to appear before him on 24-10-1998 at 4.45 p.m., without fail to receive the Judgment. It is also further stated that on the other hand, the present Collector who is the 1st respondent herein issued the impugned show cause notice dated 22-1-1999 which was received by the petitioner on 30-1-1999. It is also stated that the petitioner raised several irrelevant and baseless objections/grounds in the show cause notice for cancellation of the 'No Objection Certificate' which are beyond the scope of enquiry directed by the High Court in its order dated 24-11-1997 in W.P.No.31019/97. It is further stated that ground

Nos.1 to 4 mentioned in the 2nd page of show cause notice were framed on the basis of the three representation petitions and on the basis of objections raised by the Advocate who appeared for the objectors and additional grounds 1 to 5 mentioned at pages 3 to 4 of the show cause notice were framed on the basis of the personal inspection of the site in S.No.6/E, Brundavan Gardens alleged to have been made by the previous Collector on 5-12-1998. It is stated that the previous Collector did not give any notice of the alleged personal inspection dated 5-12-1998 to the petitioner and to the knowledge of the petitioner, no such inspection was made. It is also stated that the Collector has no jurisdiction or power to frame or enquire into the additional grounds mentioned in the show cause notice except to consider the grounds 1 to 4 mentioned in the three objections petitions dated 17-11-1997, 18-11-1997 and 20-11-1997 in accordance with law as per directions of High Court dated 24-11-1997 in W.P.No.31019/97. It is further stated that so the additional grounds 1 to 5 mentioned in the impugned show cause notice are beyond the scope of enquiry directed by the High Court and the Collector has no

jurisdiction to frame or enquire into the said grounds. Further it was stated that the petitioner filed W.P.No.4006/97 challenging the validity of the show cause notice dated 22-1-1999 marked as Ex.P.2 contending that the Collector who is exercising quasi judicial power under the petroleum Act and rules has no power to review his own order granting the 'No Objection Certificate', that the additional grounds violation of objections mentioned in the show cause notice are beyond the scope of objections raised by the objections and directed to the enquired by the High Court in W.P.No.31019/97 by its order dated 24-11-1997 and the 1st respondent should have dropped the proceedings since they are not maintainable under law as the High Court directed him to consider the objections according to law i.e., Petroleum Act and the Rules and since there is no violation of the provisions of the Act and Rules. It is also further stated that the said Writ Petition was withdrawn on 1-3-99 at the stage of admission in view of the observations made by His Lordship Justice S.R.Naik that the High Court will not interfere at the stage of show cause notice except in the

rarest of rate cases and this is not one such case. It is further stated that the petitioner and the Company submitted detailed explanations to the show cause notice stating that the first respondent has no power to review his earlier order dated 28-10-1997, that the additional charges framed by the 1st respondent are beyond the scope of the directions given by the High Court in W.P.No.31019/97, that the other charges framed on the basis of representation petitions and the arguments of their Counsel Sri Sanjeeva Reddy cannot be entertained as they do not amount to any violations of the provisions of Petroleum Act and the Rules framed thereunder. It is also further stated that the petitioner also stated in his explanation marked as Ex.P.3 that in view of the written statement filed by District Revenue Officer marked as Ex.P.4 and adopted by Collector in O.S.No.642/97 on the file of the Court of Additional Senior Civil Judge, Guntur filed by some of the objectors for cancellation of the 'No Objection Certificate' stating that the suit is not maintainable in law since the 'No Objection Certificate' was issued after enquiry and on the basis of the

reports of (1) Revenue Divisional Officer, (2) the Superintendent of Police, Guntur, (3) District Medical Health Officer, Guntur (4) Divisional Fire Officer, Guntur and (5) Municipal Commissioner, Municipal Corporation, Guntur recommending for issue of 'No Objection Certificate' dated 28-10-1997 installation of underground tank to store petroleum in the vacant land bearing S.No.6/E of Brundavan Gardens, Guntur. It is further stated that the 'No Objection Certificate' granted under Rule 144 shall not be cancelled except under Rule 151 unless the competent authority is satisfied that the licence has ceased to have any right to use the site for storing petroleum. It is also further stated that there is no powers of review to cancel the licence. It is also stated that when the High Court directed the Collector to consider the objections and pass orders according to law, the Collector should have simply said that he has no power of review and no change of circumstances as contemplated under Rule 151 to cancel the 'No Objection Certificate'. But however it is stated that the first respondent had wrongly assumed jurisdiction and entertained the objections and he had extracted in the impugned order only four violations or

objections raised by Sri A.Sanjeeva Reddy appearing for the objectors but did not refer to the additional grounds of violations mentioned in the show cause notice. It is also stated that none of the four grounds of violations referred to in the impugned order do amount to any violation of any of the provisions of the Act or the Rules. It is further stated that the first respondent did not consider and give any finding in respect of objections 2, 3 and 4 since he must have felt that they are absolutely irrelevant for consideration. It is also further stated that the first respondent considered only No.1 which is extracted hereunder:- did not consider and give any finding in respect of objections 2, 3 and 4 since he must have felt that they are absolutely irrelevant for consideration. It is also further stated that the first respondent considered only No.1 which is extracted hereunder:-

> *<u>Violation No.1:-</u> Grant of 'No Objection Certificate' is not legal since the Petrol Bunk is located in a densely populated residential locality that the underground petrol tank is located at a distance of 13'-6" from the petitioners (Smt.G.Saraswathi) house in D.No.3.30.4A on the North-West side and sparks of fire may come up to Petrol Bunk side creating a major Fire accident.*

It is also further stated that the explanation of the petitioner that the above mentioned objections taken as it is, do not amount to any violation of the Act or the Rules and according to conditions prescribed under Form XII of the Petroleum Rules, the petroleum storage tank shall not be situated within a distance of 1.5 metres from any marked boundary of the plan submitted. It is also stated that in the present case, the petrol tank is situated at a distance of 13'6" from the kitchen of Smt.G.Saraswathi which is the nearest house and at a distance of 9 feet from the marked boundary. It is also further stated that when the tank is covered by concrete top and sealed, there would be no hazard to the neighbouring locality especially when there are no openings admittedly from the kitchen of Smt.G.Saraswathi by way of door way or windows towards Petrol Filling Station. It is stated that there are absolutely no chances of sparks of fire come from the kitchen of Smt.G.Saraswathi coming up to the Petrol Bunk side creating a major fire accident. It was further stated that since the underground petrol tank is located at a distance of

13'-6" from the kitchen of the house of Smt.G.Saraswathi, it may cause fire accident and hence the violation is established. It is also stated that the reasoning of the 1st respondent is not tenable and it is a clear case of non-application of mind to the relevant facts of the case and relevant provisions of the Petroleum Act and the Rules. It is stated that it is not understandable how there is violation when the required distance is only 1.5 metres from any marked boundary and when the distance between the storage tank and marked boundary is admittedly 9 feet and the distance between the storage tank and the kitchen of Smt.G.Saraswathi is 13'-6". It is also further stated that the 1st respondent has no jurisdiction to cancel the licence on irrelevant considerations and the 1st respondent appears to have passed the impugned order due to political pressure brought by objectors who admittedly belong to Ruling Telugu Desam Party as admitted in their objection petitions, without considering the relevant facts and the Rules. It was also further stated that the 1st respondent had omitted to extract the additional violations (objections) mentioned in the

show cause notice in the impugned order, he has also considered the additional violations 2 to 5 in the impugned order. It was also stated that the 1st respondent has no jurisdiction to consider them since they are beyond the scope of directions issued in W.P.No.31019/97. It is also further stated that the additional violation No.2 considered by the 1st respondent is as follows:-

> *"The Bunk has been constructed even the suspension orders of the VGT UDA dated 20-11-1997 and Municipal Commissioner, Guntur, dt.28-11-1997 for time being that you have completed in a hurried fashion and without completing the construction on all aspects you have been selling the Petrol from 19-11-1997 motivately, ignoring the orders of the VGT UDA and continued running the Bunk upto 22-12-97 unauthorisedly i.e., upto the receipt of interim direction of Hon'ble High Court of Andhra Pradesh, Hyderabad order dated 22-12-1997."*

Further it was stated that the alleged additional violation No.2 is beyond the scope of the directions issued by this Court in W.P.No.31019/97 and 1st respondent has no power to consider and pass any orders in respect of it. It was also stated that while considering 1st part of violation No.2, 1st respondent clearly held that the petitioner had not violated the orders of VUDA dated 20-11-1997 and the 1st respondent had not stated that the petitioner had violated

2nd part of the violation No.2 relating to the sale of petroleum from 19-11-1997 to 20-12-1997 since the petitioner had stopped the sale of petroleum from 21-11-1997 to 22-12-1997 after receiving the notice from VGT UDA dated 20-11-1997 marked as Ex.P.5 till the petitioner received interim orders in W.P.M.P. No.40089/97 in W.P.No.34076/97 marked as Ex.P.6. It is also further stated that when the 1st respondent found that there is no violation No.2, he should have dropped the proceedings but he invented a new violation stating that the petitioner had hastily and due to over anxiety purchased petrol from Hindustan Petroleum Corporation. Vijayawada meant for Vijaya Oil Company, Mangalagiri Road, Guntur and dumped it into Vijaya Oil Company Petrol Bunk in Brundavan Gardens, Guntur and the said purchase of petrol from Hindustan Petroleum Corporation on 18-11-1997 itself i.e., the date of grant of licence at Madras is not covered by valid licence to be displayed at the Petrol Bunk i.e., Brundavan Gardens, Guntur and hence this violation is established. It is also stated that there is no allegation of this nature in the show

cause notice and no opportunity was given to the petitioner to explain and establish that there is no such violation and the said finding is illegal, opposed to principles of natural justice and null and void. It is also stated that the Company has got a Zonal Office at Chennai and immediately after the licence in Form XII was issued under the Explosives Act on 18-11-1997 marked as Ex.P.7, the said certificate was faxed to its supply point at Tadepalli immediately on the same day and it was intimated to the Sales Officer, Guntur over a telephone and the Sales Officer in turn informed the petitioner about the issue of licence on the same day and advised the petitioner to get the petrol load. It is stated that on the basis of the said information, the petitioner went and brought petrol load by the evening on 18-11-1997 along with the copy of the said licence and stored the petroleum under the valid licence which was displayed at Petrol Bunk. It is also stated that the surmise of the 1st respondent that the licence generally reaches the dealer on the next day i.e., on 19-11-1997 even supposing he brings the licence from Madras to Guntur is not correct. It is further

stated that the 1st respondent who is an I.A.S. Officer and who is having Video tele-conference from his Office with Secretariat at Hyderabad and to various other places knows that after the advent of fax message and telephones, it is possible to get the copy of the licence and display it on the same day. It is also further stated that if the said allegation is made in the show cause notice and opportunity was given to the petitioner, the petitioner could have explained that he got the copy of licence and he had displayed it at the Petrol Bunk. It is also stated that the 1st respondent was under a wrong impression in saying that the petroleum intended to Vijaya Oil Company, Mangalagiri Road, Guntur was diverted and in fact, the Vijaya Oil Company which was previously located at Mangalagiri Road, was shifted to Brundavan Gardens, Guntur by the petitioner. It was further stated that violation No.3 considered by the 1st respondent is not one of the objections raised by the objectors and it is beyond the scope of directions given by the High Court in W.P.No.31019/97 and the 1st respondent has no power to consider this violation and cancel the 'No Objection Certificate' marked as Ex.P.13. It was also stated that

violation No.3 reads as follows:-

> *(a) "In the application for grant of 'No Objection Certificate' the Manager (Sales) Hindustan Petroleum Corporation Limited, Secunderabad stated that the road width (on which the proposed Petrol Bunk is abutting) is shown in the Plan as 60'. But after verification and measurement on grounds, it is found to be only 48 feet"*

It is stated that the petitioner submitted his explanation stating that the width of the road abutting the Petrol Filling Station is 60 feet but on account of some encroachments, it is reduced to 48 feet at certain places and according to the Master Plan, it is 80 feet. It is also stated that the objectors have also stated in para 3(3) of the plaint in O.S.No.642/97 marked as Ex.P.8 that the width of the road is 60 feet. It is further stated that the width of the road is irrelevant for purpose of issuing 'No Objection Certificate' and there is no provision either under Petroleum Act or the Rules about the width of the road. It is also stated that when the width of the road is not a condition, 1st respondent has no right to cancel the 'No Objection Certificate' on the ground that the Company has stated the width of the road as 80 feet as per Master Plan especially when the same was also admitted by

Municipal Corporation in its counter affidavit in W.P.No.34076/97 for issuing 'No Objection Certificate' that the width of the road abutting petroleum Station is 80 feet as per Master Plan and the counter affidavit is marked as Ex.P.9. It is further stated that the reasons given by the 1st respondent for cancellation of 'No Objection Certificate' stating that the 2nd respondent has misinformed the Collector by stating that the width of the road as 60 feet while it is only 48 feet is not correct and is an irrelevant consideration. It is also stated that when no particular width of the road is prescribed either under the Act or the Rules and when the concerned authorities, like Revenue Divisional Officer, VUDA, Officers of Municipality verified the physical features and measurements on the land before issuing 'No Objection Certificate', 1st respondent has no power to cancel the 'No Objection Certificate'. It is further stated that the Company had not mis-informed the authorities about the width of the road and the petitioner gave the width of the road as 80 feet according to Master Plan. It is stated that the Municipal Commissioner has

obtained an agreement from the petitioner on stamped paper to the effect that the petitioner prepared to leave the site free of cost for formation of the 80 feet road. It is also further stated that the Commissioner, Municipal Corporation, Guntur addressed a letter dated 27-10-1997 marked as Ex.P.10 informing the 1st respondent that the petitioner had executed an agreement for leaving the site to the Municipal Corporation, Guntur for formation of the 80 feet road and so, there is no violation of all for cancellation of 'No Objection Certificate'. It was further stated that additional violation No.4 in the impugned order reads as follows:-

> *There is also no sufficient place after negotiations for the entrance and exit of vehicles at the Petrol Bunk particularly bigger vehicles are not having sufficient place to enter the area for refilling.*

It is stated that the 1st respondent has to power to consider the said violation No.4 as it is beyond the scope of directions issued by this Court in W.P.No.31019/97 and the said Writ Petition is marked as Ex.P.11 and the order dated 24-11-1997 is mid as Ex.P.12. It is also stated that apart from it, there is no provision under the Act or the Rules prescribing particular area of place for negotiating the

vehicles. It is further stated that when there is no rule prescribing particular area of place, the 1st respondent cannot say that there is no sufficient place and that the vacant site of 400 sq.yards belonging to the petitioner and the abutting road is more than sufficient for negotiation of the bigger vehicles also. Further it was stated that the explanation of the petitioner stating that only small cars, two wheelers etc., will be supplied with petrol and no large commercial vehicles will come for supply of diesel since diesel is not supplied from this Filling Station. It is also stated that the first respondent in order to some how cancel the licence invented and cause that the place is not sufficient for negotiating the vehicles that arrive for supply of petrol. It is further stated that the vehicles carrying the petrol can easily negotiate in view of the large extent of 400 sq. yards from the petitioner's site and the road abutting the Petrol Bunk. It is also further stated that when the underground petrol tank is covered by concrete top and sealed and the drive way is permitted by the explosives department, the oil tankers can be easily negotiated without any difficulty since inception of opening of outlet on 18-11-

1997 till today, the oil tankers have been freely decanting petroleum into the storage tank without any difficulty and the fact that the petitioner had been selling 70 kilo litres at the time of submitting the explanation and at present 80 kilo litres without any difficulty is proof to show that the place is more than sufficient. Further it was stated that the findings of the first respondent that oil tanker is almost of the same size as the lorry and such vehicle cannot negotiate properly and as such the site available for the Petrol Bunk appears not sufficient for negotiation of bigger vehicle is nothing but an imagination and an irrelevant consideration and except stating that there are violation of objections 1 to 5, 1st respondent does not say what provisions of Law or Rule are violated. It was also further stated that violation No.5 reads as follows:

> "*The residents of the locality in one voice requested to close the Petrol Bunk immediately as it is dangerous to Public Health and hazardous to the life and properties in case of any possible fire accident.*"

The petitioner further stated that the first respondent has no power to consider violation No.5 as it is beyond the scope and directions given I W.P.No.31019/97 and no such

objection was raised by the objector and it is not a violation at all of any of the provisions of the Act or the Rules. It is stated that few interested persons of the locality who raised objections with ulterior motives do not represent the entire locality and the petitioner got fundamental right to carry on the business according to law. It is also stated that when 'No Objection Certificate' was given according to the provision of Act and Rules and when there is no violation of any of the provision of the Act or Rules, the representations made by the residents of the locality that the installation of Petrol Bunk is dangerous to public health and hazardous to the life and properties in case of any possible fire accident cannot be taken into consideration at all. It is further stated that 1st respondent cannot take the objections of some of the residents when the Medical Health Officer inspected and submitted a report on the basis of which 'No Objection Certificate' was granted. It is also stated that in fact the Zoning regulations marked as Ex.P.14 prescribe that permission shall be granted for Petrol Filling Station in residential locality for the convenience of the public of that

locality. It is also further stated that if the storage of petrol causes any health hazard, the zonal regulations should have prohibited for installation of petroleum stations in residential locality and several safety measures prescribed in the licence were taken to prevent fire accidents. It is further stated that even in congested big cities where there is heavy density of population, permission was granted for installation of Petrol Filling Stations i.e., in Khairatabad, near Hotel Dwaraka, licence was granted for installation of Petrol Filling Station in the ground floor while the 1st floor of same building is residential. The petitioner also further stated that his explanation stating that fire prevention and fire protection devises as contemplated under the Petroleum Act and Rules have been taken and there is no scope for apprehension about fire accidents. It is also stated that there is no provision of law which says that permission shall not be granted or cancelled if some residents of locality raise whimsical apprehensions and in fact the residents of the locality have no *locus standi* or right to raise objections about the grant of 'No Objection Certificate'. It is further

stated that the petitioner also stated that handful of people who are politically influential and financially rich and who are inimically disposed towards the petitioner are making hectic attempts to some how get the 'No Objection Certificate' cancelled though the other residents of the entire locality are supporting the installation of Petrol Filling Station and that the petitioner is able to sell 70 K.L. at the time of submitting the explanation and now 80 K.L. per month from this outlet and this indicates that the residents have no objection for installation of the Petrol Filling Station. It was also further stated that the 'No Objection Certificate' was issued after considering the relevant facts and relevant provisions of the Act and the Rules. It is also stated that on account of political pressure brought by the objectors who are rich, influential and who belong to ruling Telugu Desam Party, the Vice-Chairman of VUDA issued orders dated 20-11-1997 to stop construction of the structures for installation of Petrol Filling Station after the structures were constructed even before 18-11-1997 and by filing a caveat petition I the High Court to oppose any order of suspension in a Writ Petition filed questioning the orders of VUDA. It is further stated that

in the representation petition filed by the objectors in November, 1997 marked as Ex.P.15 the objectors have admitted that they belong to Ruling Telugu Desam Party and similarly the attitude of 1st respondent in transgressing the directions of this Court and inventing new grounds of imaginary violations and cancelling the 'No Objection Certificate'. It is also stated that such allegations are not only irrelevant but also not bona fide. It is further stated that when the District Revenue Officer is the competent authority to grant 'No Objection Certificate' and when he has issued such certificate, the 1st respondent has no power to interfere with the orders of the District Revenue Officer, Guntur and apart from it, there is no power of review under the Act and the Rules. It is also further stated that when the District Revenue Officer has filed written statement in O.S.No.642/97 supporting the 'No Objection Certificate' issued by him and the same was adopted by the first respondent, he has no jurisdiction to cancel the 'No Objection Certificate'. It was also further stated that the directions given by this Court in W.P.No.31019/97 dated 24-

11-1997, affecting the petitioner's rights before giving notice and opportunity to the petitioner also not binding upon the petitioner. The petitioner further stated that the directions given in W.P.No.31019/97 and the consequential impugned order passed by the first respondent are not valid and binding upon the petitioner. It was also stated that the objectors finding no way out by directly approaching the competent authorities under the Act for cancellation of the 'No Objection Certificate' invented the ingenious method of filing a Writ Petition and getting it dismissed at the stage of admission with certain directions which amounts to allowing Writ Petition without notice and opportunity to the petitioner so as to enable the first respondent to cancel the licence taking shelter of directions given by this Court. It was also further averred at para 23 that the first respondent had also simultaneously dispatched the copy of the order to the Joint Chief Controller of Explosives, Chennai who is likely to take immediate action for cancellation of the licence given in Form XII under Explosives Act. It is stated that if the said licence is cancelled, the petitioner will be subject to great hardship and irreperable loss as the petitioner invested

lakhs of rupees for purchasing the land and for installation of the Petrol Filling Station and the petitioner has been running the Petrol Filling Station previously at Mangalagiri Road and now at Brundavan Gardens and maintaining his family. It is also stated that the fundamental right of the petitioner to carry on business guaranteed under Article 19 (1)(4) is effected and the petitioner will be deprived of his source of livelihood guaranteed under Article 21 of the Constitution of India. The petitioner further stated that the cancellation of 'No Objection Certificate' is illegal, arbitrary, not bona fide, contrary to the provisions of Petroleum Act and Rules, opposed to principles of natural justice and null and void and hit by Articles 14, 19(1)(9) and 21 of the Constitution of India.

24. In the counter affidavit sworn to by the District Collector and District Magistrate – 1st respondent, it was stated in para 2 that the Manager (Sales), Hindustan Petroleum Corporation Limited, Secunderabad had put in an application requesting for grant of 'No Objection Certificate' for installation of Petrol Bunk with an underground tank in

S.No.6/E of Brundavan Gardens, Guntur to store 24 K.Ls. of Petrol and the 'No Objection Certificate' was granted duly consulting the Inspecting Officers i.e., (1) The Revenue Divisional Officer, Guntur, (2) The Superintendent of Police, Guntur, (3) The Divisional Fire Officer, Guntur, (4) The District Medical & Health Officer, Guntur and (5) The Commissioner, Municipal Corporation, Guntur, vide Collector's proceedings D.Dis.No.2538/96 dated 28-10-1997 for installation of underground tank to store Petrol in S.No.6/E of Brundavan Gardens, Guntur in favour of Hindustan Petroleum Corporation Limited, Secunderabad. It was further stated in para 3 of the counter affidavit that aggrieved upon issuing the 'No Objection Certificate', one Smt.Gandham Saraswathi and 64 other residents of Brundavan Gardens, Guntur filed an objection petition stating that the 'No Objection Certificate' granted for installation of Petrol Bunk retail out-let in the residential locality in S.No.6/E of Brundavan Gardens, Guntur became dangerous, hazardous, unsafe and inconvenience structures in the locality and requested for cancellation of the 'No Objection Certificate' granted to the Hindustan

Petroleum Corporation Limited, Secunderabad. It is further stated that some of the objectors i.e., Bhavanam Govinda Reddy and 2 others have also approached this Court in W.P.No.31019/97 against the grant of 'No Objection Certificate', on which this Court in its order dt.24-11-1997 while disposing of the W.P.No.31019/97 directed the District Collector, Guntur to consider the representations made by the petitioners according with law and the Manager (Sales), Hindustan Petroleum Corporation Limited, Secunderabad should be given a notice before any orders are passed and it is open for the Company to raise its objections. It is also further stated that according to the directions of this Court in its order dt.24-11-1997 in W.P.No.31019/97, this respondent issued Notices to the objection petitioners and also the Chief Regional Manager and duly constituted attorney, Hindustan Petroleum Corporation Limited, Secunderabad to appear in person and to represent their case regarding the installation of Petrol Bunk in S.No.6/E of Brundavan Gardens, Guntur in this office Rc.3551/97-C6, dt.29-12-1997, 23-1-1998, 26-7-

1998, 7-9-1998 and 19-10-1998. It was further stated that the objection petitioners appeared and represented by an Advocate Sri A.Sanjeeva Reddy and stated as follows:-

1. *Grant of 'No Objection Certificate' is not legal since the Petrol Bunk is located in a densely populated residential locality that the underground petrol tank is located at a distance of 13'-6" from the petitioners (Smt.G.Saraswathi) house in D.No.3.30.4A on the North-West side and sparks of fire may come up to Petrol Bunk side creating a major Fire accident.*
2. *The residents of the locality are habituated to fire Deevali Crackers etc., during festival days in the open when fire sparks may fall on the Petrol Bunk which may result in a major fire accident.*
3. *Most of the residents in that locality are middle class people and used to cook food in the open in front of the houses or on the back and use, coal boilers and depending upon the directions of the wind, the fire sparks may spread over to the Petrol Bunk which may result in serious fire accident.*
4. *Some times the residents of the locality being middle class people, used to cook food in open more particularly during the functions under Shamiyanas when wood issued and fire sparks of which may go up to the Petrol Bunk nearby which may result in fire accidents.*

It is also stated that all the residents have stated in one voice that the installation of Petrol Bunk in the present residential locality is very dangerous, hazardous and unsafe to the life of resident nearby and their properties. It was further stated that the Advocate on behalf of the Hindustan

Petroleum Corporation Limited was done after the grant of 'No Objection Certificate' by the District Revenue Officer, Guntur on the recommendation of various Inspecting Officer i..e, the Revenue Divisional Officer, Guntur, Superintendent of Police, Guntur, Divisional Fire Officer, Guntur, District Medical & Health Officer, Guntur and Commissioner, Municipal Corporation, Guntur and it is not dangerous to the resident in the area as all fire precautionary measures have been taken as pointed out by the Divisional Forest Officer, Guntur. It is also stated that on hearing both sides i.e., the objectors and the objectors' Advocate, and the Hindustan Petroleum Corporation Limited, Secunderabad represented by Chief Regional Manager & duly constituted Attorney, Secunderabad and his Advocate, the then Collector and District Magistrate, personally inspected the site in S.No.6/E of Brundavan Gardens, Guntur on 5-12-1998 along with Revenue Divisional Officer, Guntur, Secretary, VGT UDA, Guntur, Commissioner, Municipal Corporation, Guntur and Police Departmental authorities duly informing the objectors in the locality and also the Manager (Sales), Hindustan Petroleum Corporation Limited, Secunderabad, objection

petitioners attended on the date of personal inspection of the site. It was further stated that in view of the personal inspection of the then Collector and District Magistrate, Guntur a Show Cause Notice was issued to the Chief Regional Manager and duly constituted Attorney, Hindustan Petroleum Corporation Limited, Secunderabad duly framing charges for the irregularities committed by the Chief Regional Manager, H.P.C.Limited, Secunderabad has submitted his explanation and also appeared before the District Revenue Officer, Guntur on 11-2-99 and stated the same as mentioned in his written explanation. Further at para 5, the violations, the explanation and the findings had been specified as hereunder:-

VIOLATION No.1:-

At the time of inspection it is found that the underground Petrol tank is located at a short distance of 13'-6" from the fire place/kitchen of house bearing DoorNo.3-30-4/A relating to Smt.G.Saraswathi which may possibly cause a fire accident.

EXPLANATION:-

According to conditions prescribed under Form XII of the Petroleum Act (Licence) the Petroleum storage Tank shall not be situated within a distance of 1.5 metres from any marked boundary of the plan submitted. But in this case, the Petrol Tank is situated at a distance of 9' from the marked boundary and 13'-6" from the kitchen of

Smt.G.Saraswathi. Further when the tank is covered by concrete top and sealed and the drive way is permitted over it by the explosives department, the tank can be located upto the marked boundary and even this case there would be no hazard to the neighbouring locality. In the present case, there is no openings from the kitchen of Smt.G.Saraswathi by way of Door way or window towards the Petrol Filling Station.

FINDINGS ON REPLY TO VIOLATION No.1:-

The Petrol Bunk is located at a short distance of 13'-6" feet from the kitchen room of the house bearing Door No.3-30-4/A belonging to Smt.G.Saraswathi, but according to condition of Licence granted in Form No.XII vide Chief Controller of Explosives, Madras, condition No.2 reads as follows:

2. Every tank shall be outside to any building and placed in a masonry or concrete pit and packed around with sand, earth or clay so that no air space is left between the tank and the masonry or concrete pit and the tank is not visible such a masonry or concrete pit shall not be obligatory if the tank is welded one and tested upto a preasure of 0.25 kg.per square centimeter and is burried and is one a private, leased or rented land and no part of the tank is less than 1.5 metres from any point of the marked boundary of the licenced premises in the approved plan attached hereto.

The contention of the Chief Regional Manager, Hindustan Petroleum Corporation Limited, Secunderabad that Petrol Bunk is within the limits prescribed in condition No.2 of the Licence.

At the time of inspection of the then Collector the underground Petrol Tank is located at a short distance of 13'-6" from the fire place i.e., Kitchen of the house of bearing Door No.3-304-A relating to Smt. G.Saraswathi which may cause fire accident. Hence, this violation is established.

VIOLATION No.2:-

The Bunk has been constructed even the suspension orders of the VGT UDA dated 20-11-1997 and Municipal Commissioner, Guntur, dt.28-11-1997 for time being that you have completed in a hurried fashion and without completing the construction on all aspects you have been selling the Petrol from 19-11-1997 motivately, ignoring the orders of the VGT UDA and continued running the Bunk upto 22-12-97 unauthorisedly i.e., upto the receipt of interim direction of Hon'ble High Court of Andhra Pradesh, Hyderabad order dated 22-12-1997.

The charge that Petrol was unauthorisedly sold between 20-11-1997 till 23-12-1997 i.e., Petrol was sold even after the orders of the VGT UDA suspending permission of the construction of the tank is not tenable being factually not true and unsustainable under law. As a matter of the fact, the orders of VGT UDA suspending permission was received by the dealer on 21-11-1997. The dealer did not sell even a drop of Petrol on 21-11-1997 and on subsequent days till the orders of the High Court of A.P. in W.P.No.40089/97 W.P.M.P.No.34076/97 dt.22-12-1997 suspending the proceedings of VGT UDA in this regard. The records would reveal that there is no sale of Petrol by the dealer in the subject Petrol Bunk between the period 21-11-1997 till 23-11-1997. The sale of Petrol by the dealer on 20-11-1997 is in order of the VGT UDA seems to have been dated 20-11-1997 which was served on the dealer on 21-11-1997. Therefore, even assuming the dealer is bound by the orders of the VGT UDA we have to obey it only from the date of receipt of the order, because till such time we received the order, we were not aware of the same. Therefore, as a matter of fact, there is absolutely no violation much less, disobedience of the orders of the VGT UDA. Further, we may be permitted to state that when once a licence has been granted by the District Collector being the competent authority after observing the required formalities, we are not bound by the ill motivated and illegal orders of the VGT UDA having originally given its accord and in pursuance of which the 'No Objection Certificate' was

granted it is not open to it to go back and cancel permission, it having made the Corporation to believe that every thing was in order and made the Corporation and the dealer spend huge amounts in the erection of the Petrol Bunk. Further as amount of fact even by the date of receipt of the orders from VGT UDA which is in question the construction of Petrol tank was completed and the same fact was brought to the notice of Hon'ble High Court in W.P.No.40089/97 which the dealer filed. The VGT UDA has no propriety or right to pass an order stopping construction of Petrol tank after issue of licence by the District Collector and without consultation and consent of the District Collector. The District Collector having granted 'No Objection Certificate' shall not entertain and it is not just and lawful to entertain any objection on the part of the VGT UDA in the matter of establishment of Petrol Bunk in question.

FINDINGS ON REPLY TO VIOLATION No.2:-

The violation is that the VGT UDA suspended the permission accorded for the location of the Petrol Bunk on 20-11-1997 which was served on the dealer on 21-11-1997 and contended by the Hindustan Petroleum Corporation Limited, Secunderabad. Copy of the sales Register furnished by the Hindustan Petroleum Corporation Limited, Secunderabad shows that he did not sell petrol during the period i.e., 21-11-1997 to 23-11-1997. The H.P.C.Limited Secunderabad contended that they did not disobey the orders of the VGT UDA. In this connection, it is submitted that the VGT UDA in its Rc.E1/381/97, dated 20-11-1997 suspended the installation of the Petrol Bunk and directed the Petrol Bunk dealer to stop construction of structures in the said S.No.6/E Brundavan Gardens, Guntur. It is not out of place to point out that the order issued by the VGT UDA suspending the permission granted by them by the VGT UDA suspending the permission granted by them would not come into force till the N.O.C. granted by the Collector is withdrawn and the Licence in Form XII granted by the Chief Controller of Explosives, Madras is cancelled. Thus the violation put forth would may not sustain. The Properiety or

right of VGT UDA in suspending the permission granted by it for the installation of Petrol Bunk was not accepted by the High Court in its interim order in W.P.No.34076/97 M.P.No.3712/97 dated 22-12-1997. It is further submitted in this connection that the H.P.C.Limited, which obtained N.O.C. from the Collector for installation of Petrol Bunk, approached the Chief Controller of Explosives, Madras for grant of Licence in Form XII to Store Petroleum with Retail Outlet for the fuel in motor conveyances and was granted the said licence in Form XII in No.A.P.5044, dated 18-11-1997. The said licence generally reach the dealer the next i.e., on 19-11-1997 even supposing he brings the licence from Madras to Guntur. But the dealer in his haste and over anxiety purchased petrol from H.P.C., Vijayawada meant for Vijaya Oil Company, Mangalagiri Road, Guntur and dumped it in his Vijaya Oil Company Petrol Bunk in Brundavangardens, Guntur. This goes to say that the purchase of 4,000 litres petrol from HPC on 18-11-1997 itself i.e., the date of grant of licence at Madras, is not covered by valid licence to be displayed at the Petrol Bunk i.e., Brundavan Gardens, Guntur. Hence, this violation is established.

VIOLATION No.3:-

In the application for grant of 'No Objection Certificate' the Manager (Sales) Hindustan Petroleum Corporation Limited, Secunderabad stated that the road width (on which the proposed Petrol Bunk is abutting) is shown in the Plan as 60'. But after verification and measurement on ground, it found the road width is 48' only.

EXPLANATION:-

The Hindustan Petroleum Corporation Limited mentioned in the plan attached to the application form showing the width of the road as 60'. Whereas on physical verification it is found that the width of the road is 48' in front of the Petrol Bunk in question, that as per the municipal records, the width of the road is 60'. But at some place the width of the road is found reduced to 48' on

account of the unauthorised encroachments by the residents and we cannot be held liable for the same. The Commissioner, Municipal Corporation, Guntur, has categorically admitted that the width of the road is 80' as per the master plan in the counter affidavit by him in W.P.M.P.No.40089/97 in W.P.No.34076/97 on the file of the High Court of Andhra Pradesh. An undertaking from the dealer was also taken by the Municipal Corporation, Guntur that no compensation can be claimed if any site is taken at the time of road widening. He also submitted that the relevant Petrol Bunk is not on high way.

FINDINGS ON REPLY TO VIOLATION No.3:-

The contention of the H.P.C. that the width of the road (i.e., link road between ring road from Lakshmipuram main road) is 60' feet wide as per Municipal Records and that the Commissioner, Municipal Corporation, Guntur, has admitted that the width of road under dispute is 80' feet as per the master plan. On verification from the Counter affidavit filed by the Municipal Corporation in W.P.M.P.No.40089/97 in W.P.No.34076/97, the contention of the Hindustan Petroleum Corporation Limited is not tenable for the reasons that:-

1) *The actual road on ground abutting the Petrol Bunk is only 48' feet when measured at the time of Inspection by the Collector on 5-12-1998.*
2) *The Municipal Commissioner in his counter affidavit in W.P.34076/97 while explaining the width of the road stated that the width of the existing road is 47' feet in front of the suit site "Petrol Bunk" that though an 80' feet road was proposed in the matter it may not be possible to implement it at this distance of time the contention of the H.P.C. that the road width is 60' feet is not correct. Thus the HPC had misinformed the Collector in their application seeking grant of N.O.C. that the width of the road is 60' feet while it was only 48' feet wide.*

Hence this violation is established.

VIOLATION No.4:-

There is also no sufficient place after negotiations for the entrance and exit of vehicles at the Petrol Bunk particularly bigger vehicles are not having sufficient place to enter the area for refilling.

EXPLANATION:-

The outlet does not provide sufficient place for negotiations of bigger vehicles, that this objection has no relevance to the point of issue much less it does not amount to violation of any rules or regulations. The frontage of the outlet is 54'. It is a lone MS (petrol) outlet and sale of High Speed diesel is not contemplated. Hence, the question of bigger vehicles entering into the outlet does not arise. The outlet is essentially for the purpose of serving two wheelers, autos and Petrol cars.

FINDINGS ON REPLY TO VIOLATION No.4:-

The contention of the Hindustan Petroleum Corporation that the Petrol Bunk is meant for fueling of Petrol alone for serving the purpose of two wheelers, autos and petrol cars and that the sale of H.S.D. Oil is not contemplated cannot be accepted. The vehicles supplying Petrol to the Petrol Bunk is almost of the size of a lorry and such vehicle cannot negotiate property to get into the Petrol Bunk and to go out freely. The site available for the Petrol Bunk appears not sufficient for negotiation of bigger vehicles. Hence this violation is established.

VIOLATION No.5:-

The residents of the locality in one voice requested to close the Petrol Bunk immediately as it is dangerous to Public Health and hazardous to the life and properties in case of any possible fire accident.

EXPLANATION :-

The above objection is most untenable, unreasonable motivated and in fact not true and it is only intended to cause immense loss to H.P.C. and to the dealer and it is engineered by few individuals with vested

interests. When the statutory Zonal regulations permit the setting up of Petrol Filling Station in residential localities it shall be deemed that the Government have considered the pros and cons of the establishment of a Petrol Filling Station in a residential locality and came to the conclusion that there is no danger or hazard to public life and property. Therefore, it is not open to them to request for cancellation of N.O.C. on the ground that it is a residential locality and that hazardous to life and property. It is also stated that a handful of people politically influential and financially rich, who are inimically disposed towards the dealer are busy making attempts to get the N.O.C. cancelled in some way or other because the dealer was not prepared to accede to their unlawful demands. But, the entire residents of the locality are supporting the setting up of the Petrol Bunk or else it could not have been possible for the pump to reach 70 KL Petrol sales from the outlet per month.

FINDINGS ON REPLY TO VIOLATION No.5:-

No doubt the Petrol Bunk is located in a thickly populated residential area however the residents in one voice represented to the Collector at the time of his inspection of the site to cancel the 'No Objection Certificate'. Hence, this violation is also established.

Further specific stand was taken that by virtue of the aforesaid violations, which had been established and there is scope for dangerous to public health and hazardous to the life and properties of neighbourhood of the locality and in case of any possible fire accident, the powers had been invoked under Rule 151 of the Petroleum Rules 1976 and accordingly, the then Collector & District Magistrate, Guntur

issued the impugned order cancelling the 'No Objection Certificate' granted to G.Ramaswamy, Sales Manager, Hindustan Petroleum Corporation Limited, Secunderabad vide Collector's D.Dis.No.2538/96-C6 dt.28-10-1997. Hence, it was prayed that the Writ Petition be dismissed.

25. In the reply affidavit filed, it was stated that the permission under Sections 13 and 14 of the A.P.Urban Areas Development Act 1975 had been granted in the name of the Company as per the relevant Rules and then the 'No Objection Certificate' was issued by the District Revenue Officer after calling for the reports from the RDO., Guntur, Municipal Corporation, Guntur, District Medical Health Officer, Guntur, District Forest Officer, Guntur and Joint Chief Controller of Explosives, Chennai. In the reply affidavit again several factual details, which had been narrated, had been repeated and O.S.No.642/97 and O.S.No.221/97 also had been referred to.

26. On a careful analysis of the respective stands taken by the parties, it is clear that the 'No Objection Certificate' and all the required approvals had been obtained. At present, the Petroleum Rules of 2002 made in exercise of

powers conferred by Sections 4, 5, 14, 21 and 22 and sub-Section (1) of Section 29 of the Petroleum Act 1934 govern the field. At the relevant point of time, the Petroleum Rules of 1976 made in exercise of powers under the provisions of the Petroleum Act 1934 referred to supra governed the field. Rule 151 of the Petroleum Rules 1976 dealing with ***Cancellation of No Objection Certificate*** reads as hereunder:-

> *(1) A 'no objection certificate' granted under rule 144 shall be liable to be cancelled by the District Authority or the State Government, if the District Authority or the State Government is satisfied, that the licensee has ceased to have any right to use the site for storing petroleum:*
>
> *Provided that before cancelling a 'no objection certificate', the licensee shall be given a reasonable opportunity of being heard.*
>
> *(2) A District Authority or a State Government cancelling a 'no objection certificate' shall record, in writing the reasons for such cancellation and shall immediately furnish to the licensee and to the licensing authority concerned a copy of the order cancelling the 'no objection certificate'.*

The corresponding present Rule under 2002 Rules is Rule 150. Rule 144 of the Petroleum Rules 1976 dealing with '***no***

objection certificate' reads as hereunder:-

(1) Where the licensing authority is the Chief Controller or the Controller of Explosives as the case may be, an applicant for a new licence other than a licence in Form III, IX, IV or XVI shall apply to the District Authority with two copies of the site plan showing the location of the premises proposed to be licensed for a certificate to the effect that there is no objection to the applicant receiving a licence for the site proposed and the District Authority shall, if he sees no objection, grant such certificate to the applicant who shall forward it to the licensing authority with his application in Form VIII.

(2) Every certificate issued by the District Authority under sub-rule (1) shall be accompanied by a copy of the plan of the proposed site duly endorsed by him under his official seal.

(3) The Chief Controller or the Controller of Explosives as the case may be may refer an application not accompanied by a certificate granted under sub-rule (1) to the District authority for his observations.

(4) If the District Authority, either on a reference being made to him or otherwise, intimates to the Chief Controller or the Controller of Explosives, as the case may be, that any licence which has been applied for should not, in his opinion, be granted such licence shall not be issued without the sanction of the Central Government.

Section 13 of the A.P.Urban Areas (Development) Act, 1975 dealing with ***declaration of development areas and***

development of land in those and other areas reads as hereunder:-

(1) As soon as may be after the commencement of this Act, where Government consider it necessary to do so for purposes of proper development of any urban area or group of urban areas in this State they may, by notification, declare such urban area or group of urban areas to be a development area for the purposes of this Act.

(2) The Government may, by notification and in accordance with such rules as may be made in this behalf –

a) Exclude from a development area any area comprised therein; or

b) Include in a development area any other area.

(3) Save as otherwise provided in this Act, the Authority shall not undertake or carry out any development of land in any area which is not a development area.

(4) After the commencement of this Act, no development of land within the development area shall be undertaken or carried out by any person or body including any department of the Government, unless permission for such development has been obtained in writing from the Authority in accordance with the provisions of this Act.

(5) After the coming into operation of any of the plans in any area within the development area, no development shall be undertaken or carried out in that area unless such development is also in accordance with such plans.

(6) Notwithstanding anything in any other law or the provisions contained in sub-Sections (4) and (5), development of any land undertaken in accordance with any law by any person or body including any department of the Government or any local authority before the commencement of this Act, may be completed without compliance with the requirements of those sub-Sections.

Provided that such development of land shall be completed within one year from the date of commencement of this Act; unless the Authority for good and sufficient reason, extends the said period of one year for such further period as it deems fit.

(7) After the commencement of this Act, no development of land shall be undertaken or carried out by any person or body including any department of the Government in such area adjoining to or in the vicinity of the development area, as may be notified by the Government unless approval of or sanction for such development has been obtained in writing from the local authority concerned, in accordance with the provisions of relevant law relation thereto, including the law relating to town planning for the time being in force and the rules and regulations made thereunder:

Provided that the local authority concerned may, in consultation with the Authority, frame or suitably amend its regulations in their application to such area adjoining to or in the vicinity of the development area.

(8)

(a) Where any part of the area adjoining to or in the vicinity of the development area, as notified under sub-Section (7), is in the process of rapid development or is likely to develop in the near future, the local authority concerned shall, either on the direction of the Government or on the advice of the Authority, prepare in consultation with the Authority, Town Planning Scheme under the law relating to Town Planning, for the time being in force, and publish the schemes as required under that law and submit them to the Government for sanction.

(b) Any development in the area covered by such Town Planning Schemes shall be in accordance with the provisions of the schemes as sanctioned by the Government.

(c) Where in regard to the matters specified in sub-Section (7) and of this sub-Section there is a difference of opinion between the local authority concerned and the Authority, the matter shall be referred to the Government, whose decision thereon shall be final.

(9) In this Section, and in Sections 14, 16 and 41 the expression 'Department of the Government' means any department, organization or Public Undertaking of the State Government or of the Central Government.

No doubt, there appear to be certain objections raised by the neighbours and the local people and certain submissions were made relating to the width of the road and the other practical problems. Incidentally, the environmental problems and the safety measures also are pressed into service by the contesting respondents in these Writ Petitions for the purpose of sustaining the impugned orders. On a careful analysis of the whole factual matrix and also the relating Rules referred to supra, inasmuch as, the installation of Petrol Filling Station in a residential area is not totally prohibited, the 1st respondent – District Collector and the District Magistrate having been satisfied with all the requisite formalities to be complied with and having granted 'No Objection Certificate', now makes the impugned order raising certain grounds as objections and these objections more or less are general in nature and no specific violation

or contravention of a statutory provision or a statutory Rule as such had been clearly spelt out. It is needless to say that when an authority exercised statutory power, the authority is guided by the provisions of the concerned statute and the Rules made thereunder and even if an element of discretion marginally may have to be given while exercising such powers to such competent authority, the same to be within the permissible limits and such action must stand to reason. Here is a case where the Company in question had obtained all the approvals inclusive of the 'No Objection Certificate' and at this distant point of time on the ground that certain objections had been raised, either on the ground of health hazard or on the ground of environmental problem, fire safety problem and the other like problems, which are more or less general in nature, the first respondent is not justified in making such impugned order. It is true that the impugned order is a lengthy order but devoid of any statutory infraction or violation. Hence, this Court is satisfied that the discretion was not exercised in right perspective by the first respondent while making the impugned order and in view of the same, this Court is of the considered opinion that

even if the language of Rule 151 of 1976 Rules is taken into consideration, this Court is of the considered opinion that the writ petitioner is bound to succeed.

27. For the foregoing reasons, the Writ Petitioner is entitled to the reliefs prayed for in both the Writ Petitions and accordingly, these Writ Petitions are allowed. But, however, in the peculiar facts and circumstances, the parties to bear their own costs.

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Justice P.S.Narayana

Date: November, 2006

Note: L.R.Copy to be marked (YES/NO)

(B/o.SMR)